# Muddy Broadcasting Company

2780 SW Talbot Rd. Portland, Oregon, U.S.A. 97201-1698


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Federal Communications Commission
Office of Secretary

November 23, 2001

Secretary
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
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(off-site mailroom for courier service)

Included herein is an original and eleven (11) copies of Muddy Broadcasting Company's Petition for Reconsideration of the Report and Order in Docket 00-87. Please contact me in the event that there are questions regarding this Petition.

Thomas C. Holland
Secretary/Treasurer -
Muddy Broadcasting Company

Muddy Broadcasting Company
Attn: Thomas C. Holland
2780 SW Talbot Rd.
Portland, Oregon 97201-1698
503-292-3900

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**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON DC 20554**

RECEIVED
DEC 1 8 2001
Federal Communications Commission
Office of Secretary

| | | |
|---|---|---|
| **IN THE MATTER OF:** | ) | |
| | ) | |
| **AMENDMENT OF SECTION 73.202(b)** | ) | **MM Docket No. 00-87** |
| **TABLE OF ALLOTMENTS** | ) | **RM-9870** |
| **FM BROADCAST STATIONS** | ) | **RM-9961** |
| **(BRIGHTWOOD, MADRAS, BEND** | ) | |
| **AND PRINEVILLE OREGON)** | ) | |


TO: John Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

# PETITION FOR RECONSIDERATION

November 23, 2001

Muddy Broadcasting Company ("Muddy") hereby petitions for reconsideration of the Report and Order in the above captioned proceeding. This Petition is based on the provisions of 47 CFR §1.429(b)(1) in that "the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission," and/or §1.429(b)(2) "the facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity." Specifically, due to a recent class downgrade by KSTE-FM[1], Vancouver WA, there are now new locations with good line-of sight

[1]KSTE-FM was formerly known as KBET-FM, KKLQ, and KXMX.

that can be used for allotting Channel 291C1 to Madras, OR. These better locations were not available until recently, due to the former short spacing with KSTE-FM. These changed conditions can now allow Channel 251C3 to be allocated to Brightwood, OR, as Muddy sought in its original Petition for Rulemaking in this Docket.

## I. BACKGROUND

On March 16, 2000, Muddy Broadcasting Company filed a Petition for Rulemaking to add Channel 251C3 to the FM table of allotments, for the community of Brightwood, OR. The reference coordinates chosen were at an established radio site, with full line of sight to Brightwood. The FCC found merit in the Petition, and issued a Notice of Proposed Rulemaking on May 10, 2000.

Subsequently, Madras Broadcasting filed a counter-proposal to instead allocate Channel 251C1 to the community of Madras, OR. This would require channel substitutions to be made by on-air station KTWS (FM), Bend, OR, and to the vacant Ch 254C3 allotment at Prineville, OR. On July 25, 2000, Muddy filed Comments in Opposition to the Madras Broadcasting counterproposal, showing that while there were no other channels that could be allocated to Brightwood, there were several alternative channels that could be allocated to Madras, including Channel 291C1. Comments in support Muddy's position were also filed by the Chamber of Commerce and the Fire District in the Brightwood area, and by Combined Communications, owners of KTWS.

On September 20, 2000, the FCC issued a Public Notice on the Madras Broadcasting counterproposal. Both Madras Broadcasting and Muddy filed comments on this Notice, on

October 5, 2000. Madras Broadcasting prepared terrain profiles, which attempted to show that the Channel 291C1 alternative channel proposed by Muddy was more severely terrain blocked than their Channel 251C1 counterproposal, and would require a much taller tower to provide line of sight coverage. Muddy reiterated its previous points, and showed two additional lower class channels that might be used to serve Madras. This would normally have been the last opportunity that Muddy would have to formally comment in the proceeding.

On October 18, 2000, Muddy filed a Motion to Strike the October 5, 2000, comments of Madras Broadcasting as an unauthorized pleading improperly raising new arguments that should have been addressed earlier in the proceeding. Also, an analysis by Muddy found that the Madras Broadcasting terrain profile studies were faulty and misleading. When showing the Madras Broadcasting Ch 251C1 counterproposal, they used an elevation of 2398 feet (731 meters) as the elevation for the community of Madras. When showing a terrain profile of the Muddy alternative Ch 291C1, they used a lower elevation of 2238 feet (682 meter) for Madras. The result was a skewed comparison. When an "apples to apples" comparison was made[2], Muddy showed that both Ch 251C1 and Ch 291C1 were equally mediocre[3], requiring tower heights above ground to clear all intervening terrain that were within 2% of each other. Muddy concluded that the Commission must therefore find that both channels are either acceptable or unacceptable on the

---

[2]Using 3 second data at 0.1km intervals from the transmitter site, with ground elevations for both the transmitter site and the community of Madras obtained from the pertinent 7.5 second USGS topographical map.

[3]Based on this method, the Madras Counterproposal site would require a tower approximately 2740 feet (835 meters) above ground level, while the Muddy Broadcasting Company (as proposed July 25, 2000) "old" alternative Ch 291C1 site would require a tower approximately 2800 feet (853 meters) above ground level

terrain obstruction issue. Either way, this would allow the allotment of Channel 251C3 to Brightwood. This was the last opportunity for Muddy to comment in the proceeding.

What followed was an Opposition to the Motion to Strike filed by Madras Broadcasting, and an Order to Show Cause issued by the FCC to Combined Communications. In Combined Communications' reply, another channel, 227C1, was found that could be allocated to Madras. It would require a frequency substitution to the vacant allotment at Condon, OR. Finally, on January 23, 2001, Madras Broadcasting submitted a reply, which was to be the last comment in the Docket.

On October 26, 2001, the Commission released a Report and Order, granting Channel 251C1 to Madras, and no channel to Brightwood. The Commission found that 291C1 would not work as an alternative channel to serve Madras, because of "massive terrain blocking". It also found that Channel 251C1 at Madras Broadcasting's site (as presented in their original counterproposal) would not require an excessively tall tower to overcome a massive terrain obstruction, and was therefore acceptable. It further ruled that Channel 227C1 introduced a new community (Condon, OR) into the proceeding, too late in the process. With only one channel deemed available - 251 - and both communities lacking first local service, the allotment was awarded to the larger community of Madras.

## II. KSTE-FM, VANCOUVER, WA ISSUES

KSTE-FM is pertinent to this case because it was a major limiting factor in the options of where Channel 291C1 (Muddy's alternative channel for Madras) could be located. KSTE-FM operates on first-adjacent channel 290 (105.9mhz). Muddy Broadcasting Company has

periodically downloaded and saved historical copies of the FCC fmfxeng.dat "flat-file" FM databases. We have copies of these files dated June 6 and November 20, 2001. These files are maintained constantly by FCC staff, and are used as the primary data source by a wide variety of third-party channel study software packages. According to these files, KSTE-FM maintained a Class C1 CP database entry until at least June 6, 2001, long after all comment periods on the Madras/Brightwood Docket were closed. Muddy also has a printout of an Available Channel Interference Analysis from the FCC LPFM Channel Finder, dated June 15, 2001, which clearly shows that KSTE-FM (then KKLQ) still maintained its C1 designation, requiring protection. Apparently, sometime between June 15 and November 20, 2001, this Class C1 database entry was deleted by the FCC.

Now, with KSTE-FM on the air and permanently downgraded to a C2 (and at a location father from Madras), large new areas are open for allotment sites on Channel 291C1 to serve Madras. These sites are northeast of Madras, close to the Allotment Site approved in the Report and Order. These areas northeast of Madras provide the least amount of terrain obstructions. As shown in the next section, Muddy has found a new Ch 291C1 Allotment Site in this area that provides better line-of-sight and less terrain obstruction than the Ch 251C1 site approved in the Report and Order. It also provides better line-of-sight and less terrain obstruction than the "old" Ch 291C1 site proposed by Muddy in July, 2000. This new site is at **44:49:12N; 120:38:57W**. It can provide 70dbu coverage to all of Madras in compliance with 47 CFR §73.315. Unlike all other potential C1 allotment sites that have been discussed in this proceeding, this new site has already been developed as a radiofrequency communications site, with power and an access road. *Muddy is presenting this new alternative allotment site under the provisions of 47 CFR*

*§1.429(b)(1) and/or (b)(2). Clearly, the facts that the Commission relied on to make its decision have changed, and did so since the last opportunity to formally present them had passed.* Or, alternately, in case the problem turns out to be a lag in the database maintenance by FCC staff, Muddy *could not, through the exercise of ordinary diligence, have learned of these facts in question prior to such opportunity.*

**Timeline for KSTE-FM**:

| | |
|---|---|
| April 28, 1998 | Original CP Granted - Class C2 at 45:40:46N; 122:22:06W - Livingston Mountain - near Camas, WA |
| Nov. 17, 1999 | CP Granted - upgraded to Class C1 at 45:27:13N; 122:32:45W - Mt. Scott - near Portland, OR |
| Aug. 24, 2000 | CP Granted - Class C2 at 45:31:21N; 122:44:45W - Sylvan District - Portland, OR<br>*Mt. Scott C1 CP remains on FCC database* |
| Feb. 5, 2001 | KSTE-FM signs on the air at Sylvan<br>*Mt. Scott C1 CP remains on FCC database* |
| Apr. 12, 2001 | 302-FM Application for Station License at Sylvan site, Accepted for Filing<br>*Mt. Scott C1 CP remains on FCC database* |
| Jun. 6, 2001 | Mt. Scott C1 CP still appears on FCC database |
| June 15, 2001 | Mt. Scott C1 CP still appears on the LPFM Channel Finder |
| Nov. 20, 2001 | Mt. Scott C1 CP no longer on FCC database |

## III. DISCUSSION

Based on its methodology, Muddy Broadcasting Company believes that its previous characterization of both 251C1 and 291C1 (at "old" site proposed by Muddy on July 25, 200) as

being equally mediocre to serve Madras, is valid. However, we recognize that different engineering methodologies and different terrain datums can yield different results. Most staff work at the FCC, for example, relies on 30-second digitized terrain data. An examination of several past cases wherein the FCC has ruled that an intervening terrain obstruction was or was not acceptable, suggests that the ground elevations within a community were those that were indicated by the digitized terrain data. In studies done by Telecommunications Analysis Services[4] (sometimes used by FCC staff), the defaults for their "Profile" studies are 3-second terrain data, destination point elevations as indicated by the terrain data, and 0.1km elevation sampling intervals along the radial. In order to more closely comport to the apparent methods used by the FCC in judging such cases, we shall use both 3-second and 30-second data, 0.1km elevation sampling intervals, and receiver elevations as indicated by the terrain data, in this Petition for Reconsideration.

**Exhibit 1** shows a terrain profile from the Report and Order Allocation Site to the reference coordinates of the community of Madras, using 3-second data. It shows that a 365 meter tower would be necessary to provide full line-of-sight coverage. **Exhibit 2** shows a profile from the new Ch 291C1 Allocation Site now being suggested by Muddy, also using 3-second data. It shows that a tower 329 meters above ground would be required. **Exhibits 3 and 4** show these same comparisons, using 30-second terrain data. In both comparisons, the results are very close, with the Muddy site shown as being superior when the more accurate 3-second terrain data is used.

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[4]TA Services is part of the National Telecommunication and Information Administration, Institute for Telecommunications Sciences

Cases before the FCC have arisen over the years that discuss minor local obstructions. Since many communities are in deep valleys surrounded by hills, it is often impossible to present true line-of-sight to an entire community unless the antenna is right on the ridgeline - not possible in some instances. Towers located some distance from the ridgeline may have to make huge increases in tower height, in order to overcome what often is just a minor shadowing problem. Recognizing this, **Exhibits 5 - 8** compare the two sites using both terrain datums, but ignoring the minor shadowing caused by the ridgeline immediately surrounding Madras[5]. Under these conditions, the new Muddy site is clearly superior. It has less midpoint terrain problems than does the Report and Order site. With 30 second data, the Report and Order site would require a tower 2 ½ times the height of the new Muddy site.[6] *Clearly, since the Report and Order site has been found to be acceptable in regards to terrain obstructions, so should the new Muddy site.* See **Exhibit 9** for a Data Summary of the terrain profiles.

**Exhibit 10** shows a current spacing study for the new Muddy Ch 291C1 site. All other stations would be provided with the required clearances, in accordance with §73.207. This Exhibit also contains a spacing study based on June 6, 2001 FCC data, showing the presence of the short-spaced KSTE-FM C1 CP. Thus, the new Muddy Ch 291C1 site would not have been possible, until after at least June 6, 2001.

**Exhibit 11** is a site map, clearly showing that this has been developed as a radio site.

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[5]Both sites provide over 70dbu coverage with towers that clear the mid-point obstructions, when computed by the Longley-Rice method, despite this minor local shadowing.

[6]Under these conditions, the Muddy New Alternate Site would require a tower 82m (269ft) above ground level, while the Report and Order Allotment Site would require a tower 203m (666ft) above ground level.

## IV. CONCLUSIONS

Throughout this proceeding, the Commission has repeatedly stated that both Brightwood and Madras are deserving of an allotment.[7] We agree. The only hurdle is that the Commission determined that only one channel was available, and so a decision had to be made on the relative merits of the two communities. The Commission found that ("old" site) Channel 291C1 would not work because of "massive terrain blocking." It also found that the allotment site for Channel 251C1 for Madras did not have this problem, and was acceptable. In light of the *new* site presented herein for Channel 291C1 that is superior to the Channel 251C1 site that has already been judged to be acceptable; in light of the fact that this new site was not available for usage (or appeared not to be available for usage) prior to the last opportunity to present it to the Commission; and, in light of the fact that the conditions of this Petition for Reconsideration are in compliance with §1.429 of the FCC Rules, Muddy Broadcasting Company strongly urges the Commission to reconsider the Report and Order, and allot Channel 291C1 to Madras, OR, and Channel 251C3 to Brightwood, OR.

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[7]1. Notice of Proposed Rulemaking, Released May 19, 2000, "...(Brightwood) proposal warrants further consideration because it complies with our technical requirements and could serve the public interest.

2. Order to Show Cause, Released November 17, 2000, "We believe that both proposals in this proceeding could provide significant public interest benefits."

3. Report and Order, Released October 26, 2001, "We find that both Brightwood and Madras are communities for allotment purposes and deserving of an allotment..."

In light of all the circumstances presented herein, Muddy Broadcasting Company respectfully requests that the Commission reconsider the Report and Order in this proceeding and grant the relief it has requested.

I certify that the material contained herein is true, to the best of my knowledge and ability.

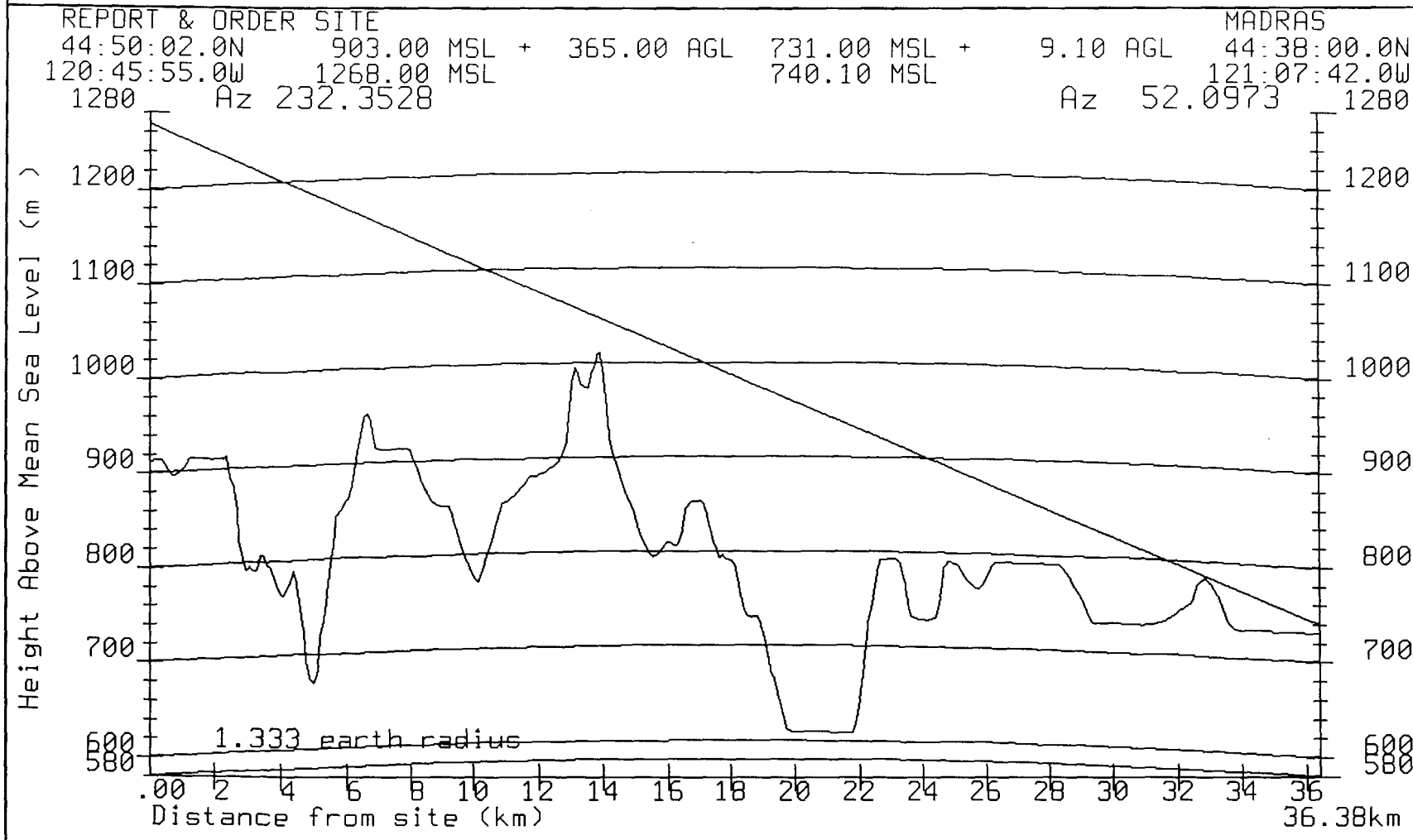
MUDDY BROADCASTING COMPANY

By _____ ASSEC. TREAS.
Thomas C. Holland, Secretary/Treasurer
Muddy Broadcasting Company

All correspondence should now be sent to:

Muddy Broadcasting Company
Attn: Thomas C. Holland
2780 SW Talbot Rd.
Portland, Oregon 97201-1698

.251C1 REPORT AND ORDER ALLOTMENT SITE
TERRAIN PROFILE TO MADRAS - 3 SEC DATA
MUDDY BROADCASTING COMPANY
11/21/01




Elevation values from:
3-second elevation data

**EXHIBIT 1**
**REPORT & ORDER ALLOTMENT SITE**
**3-SECOND DATA**

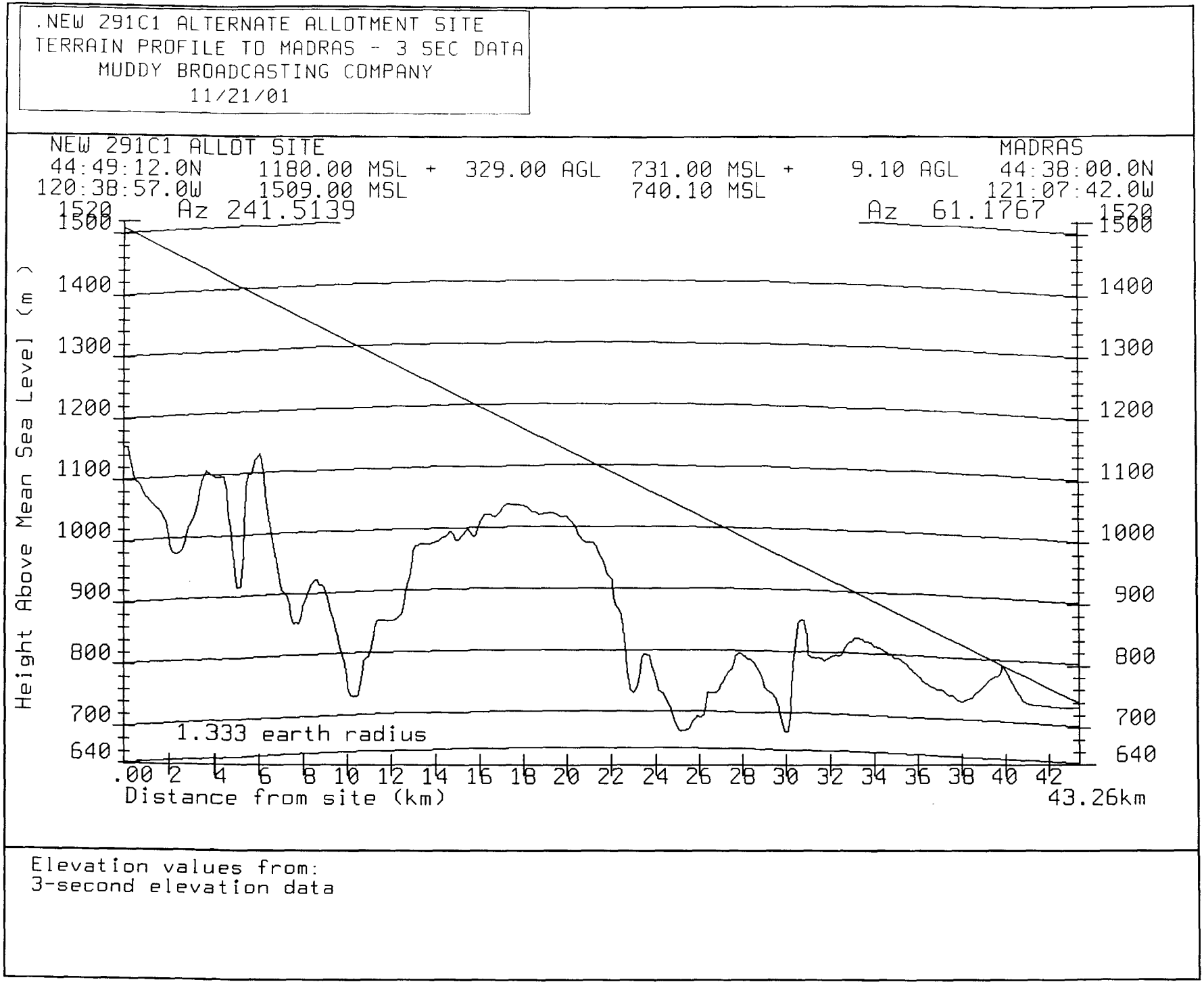



**EXHIBIT 2**

**NEW Ch291C1 ALTERNATE ALLOTMENT SITE**

**3-SECOND DATA**

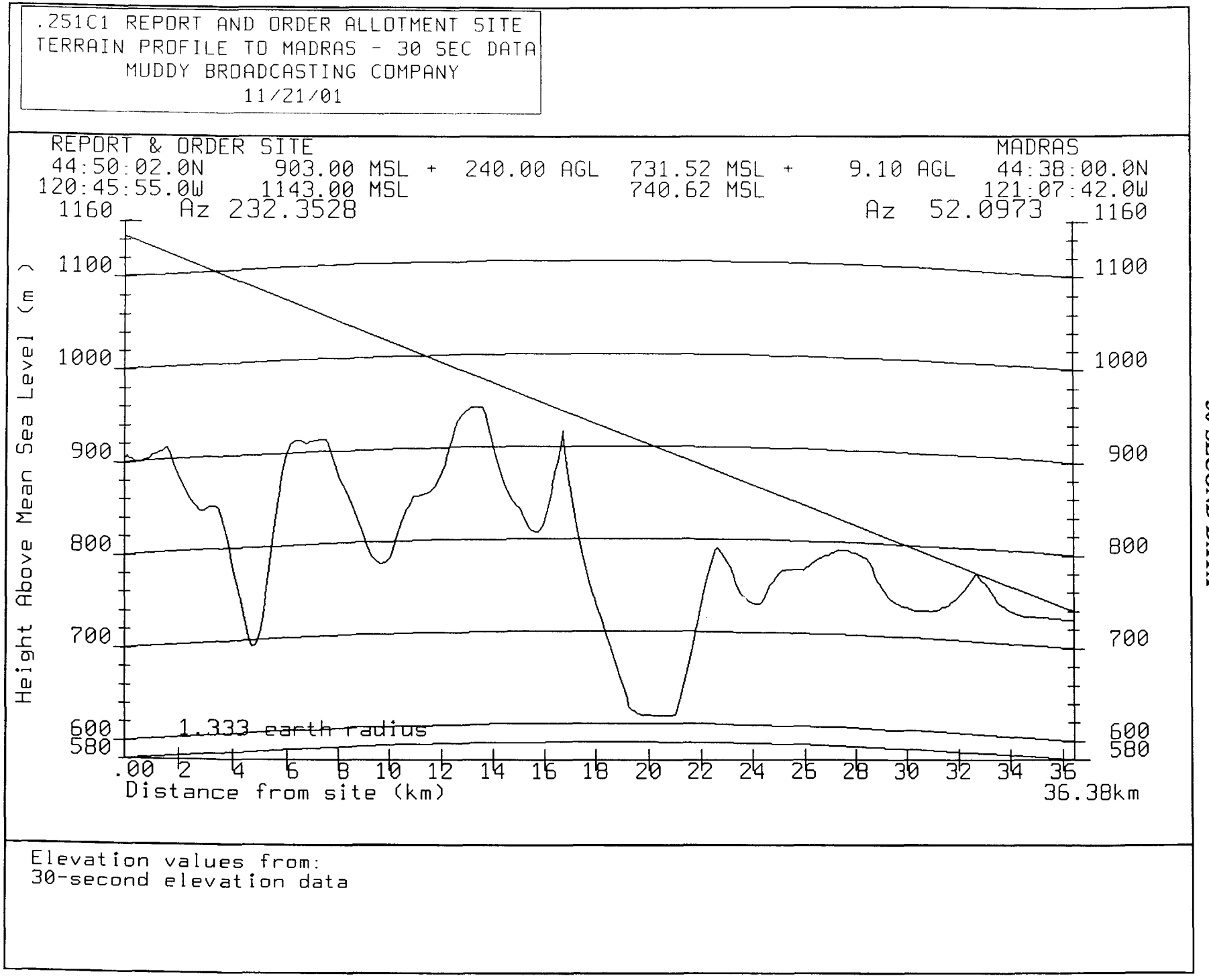
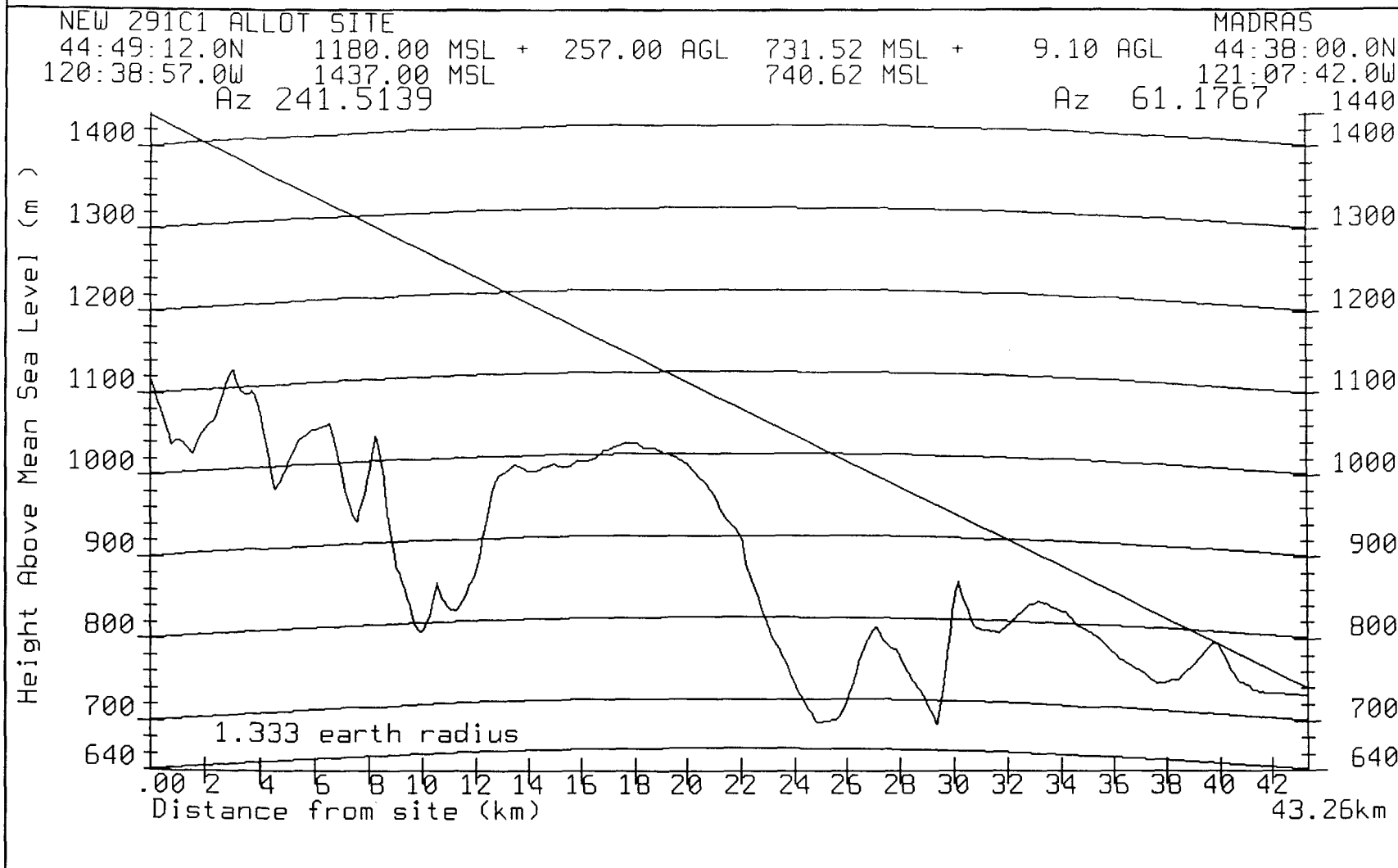



**EXHIBIT 3**
**REPORT & ORDER ALLOTMENT SITE**
**30-SECOND DATA**

# EXHIBIT 4

**NEW Ch291C1 ALTERNATE ALLOTMENT SITE**
**30-SECOND DATA**

.NEW 291C1 ALTERNATE ALLOTMENT SITE
TERRAIN PROFILE TO MADRAS - 30 SEC DATA
MUDDY BROADCASTING COMPANY
11/21/01




Elevation values from:
30-second elevation data

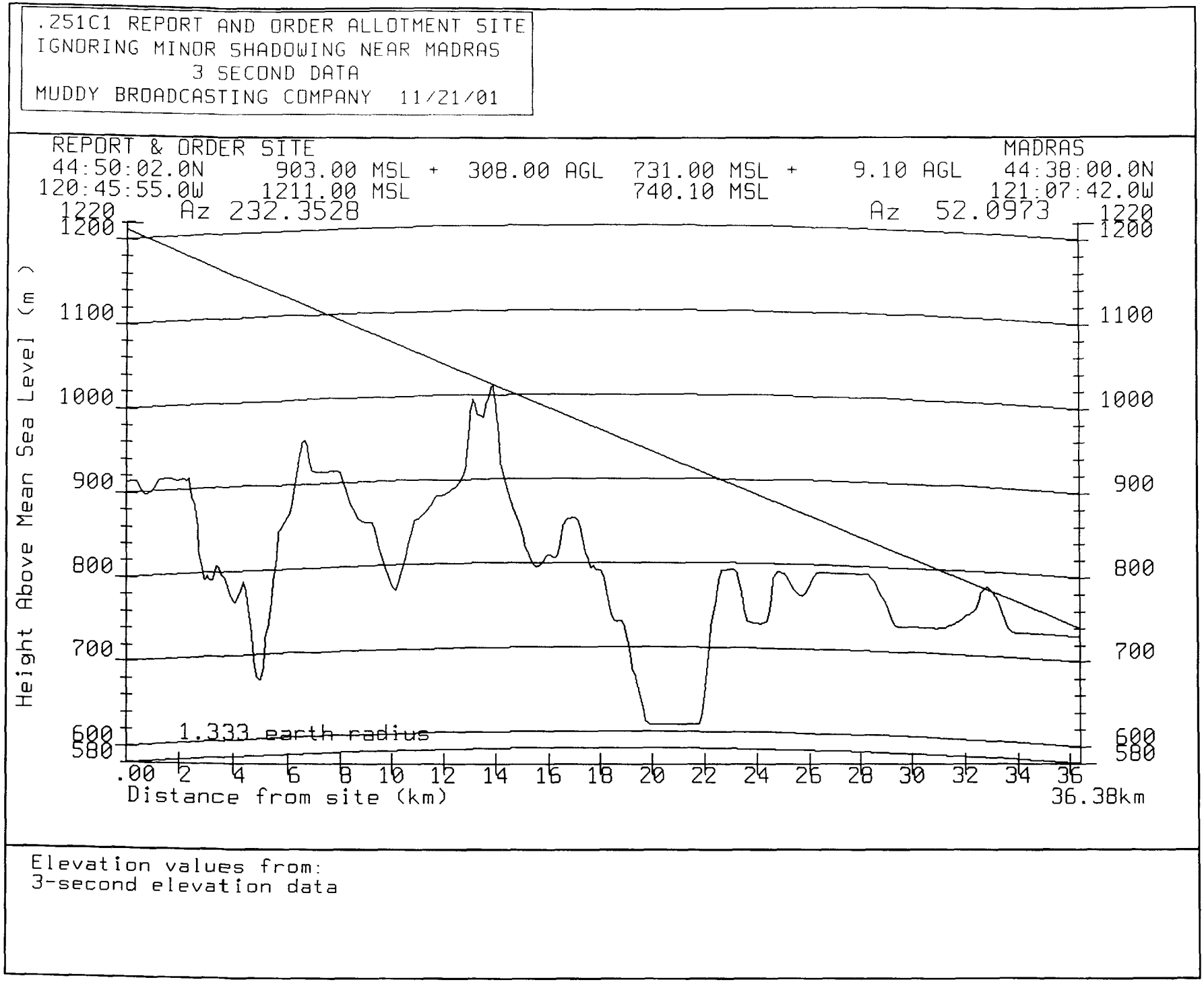


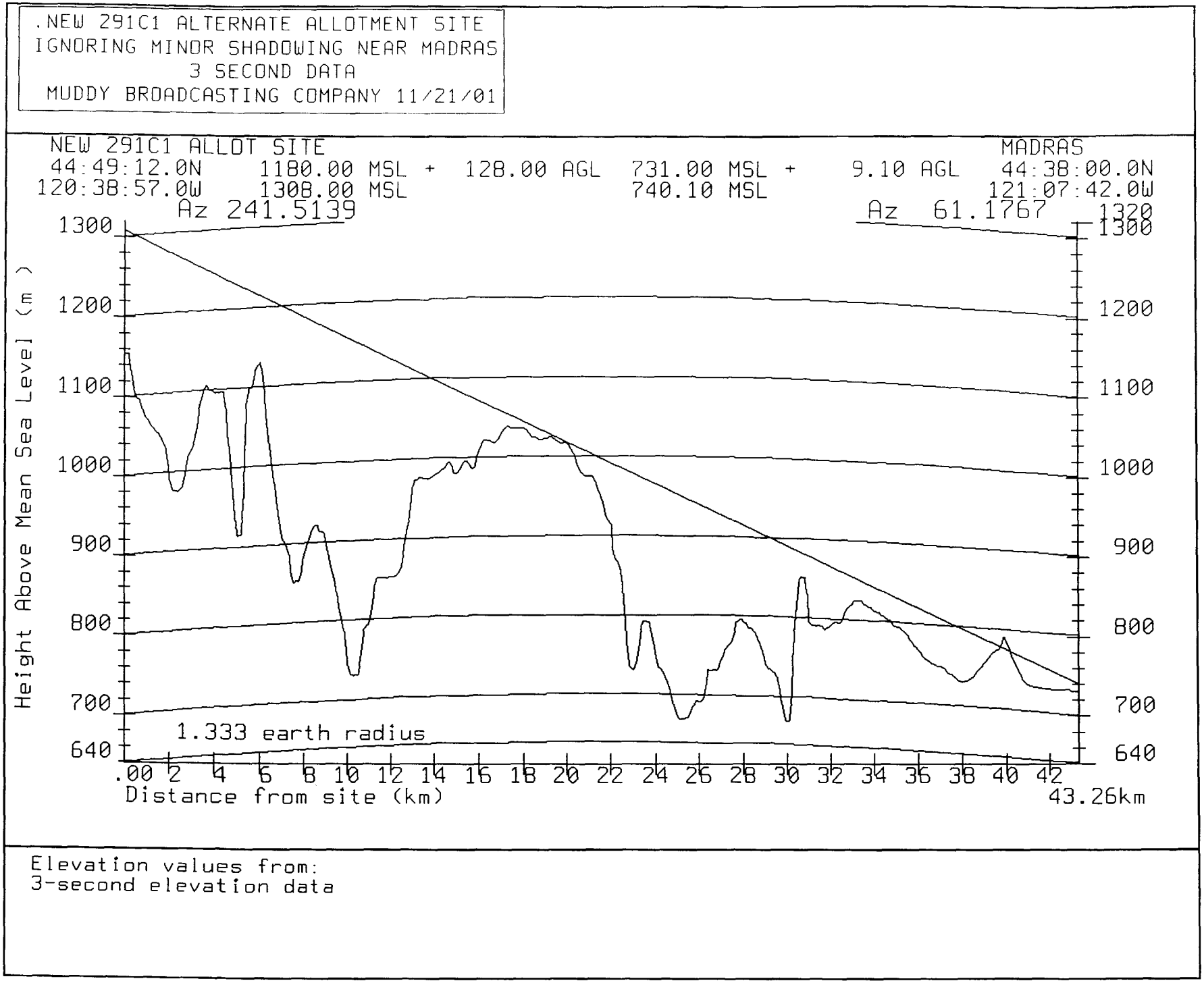

**EXHIBIT 5**

**REPORT & ORDER ALLOTMENT SITE**

**IGNORING MINOR SHADOWING NEAR MADRAS – 3-SECOND DATA**

# EXHIBIT 6

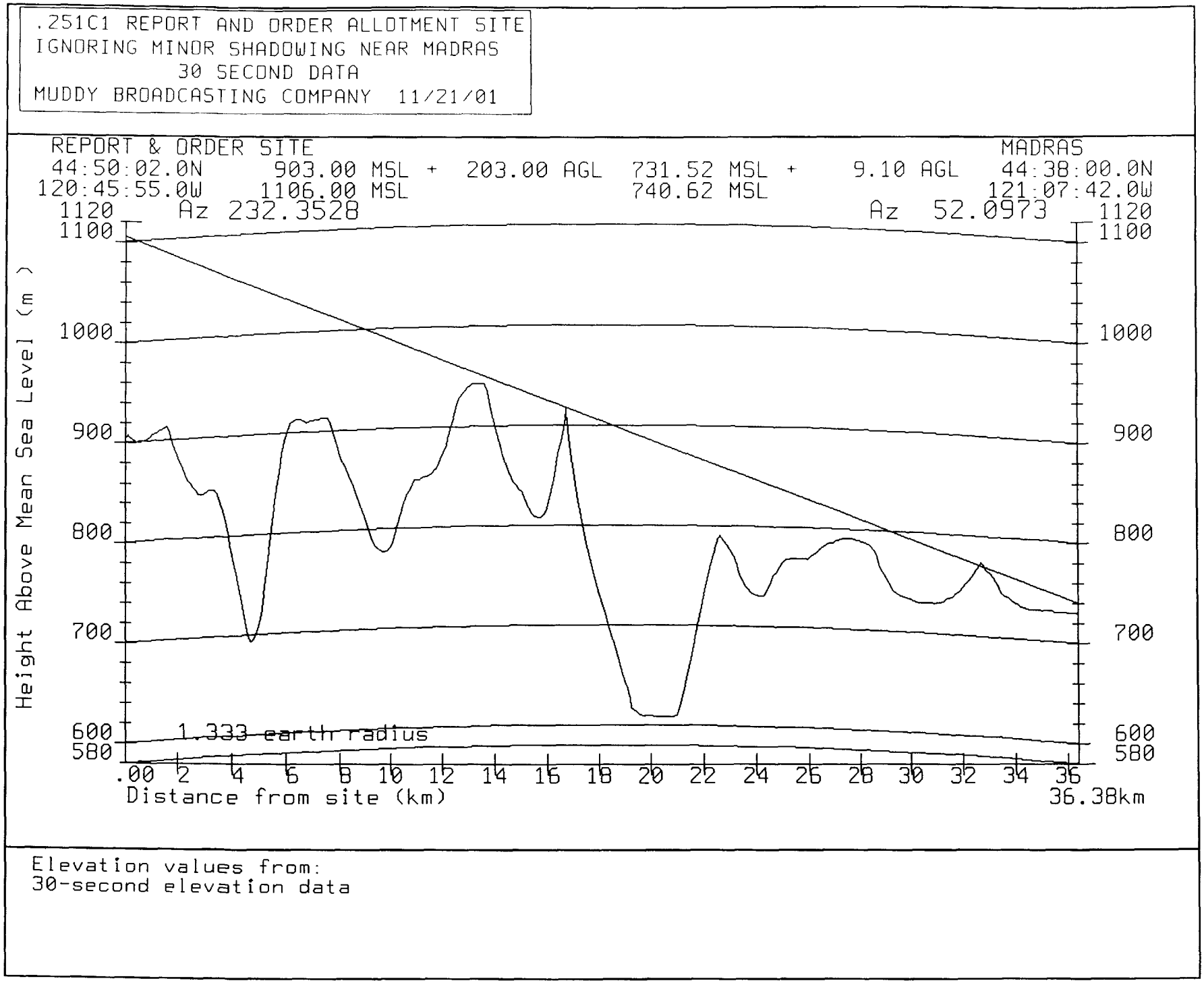
**NEW Ch291C1 ALTERNATE ALLOTMENT SITE**
**IGNORING MINOR SHADOWING NEAR MADRAS – 3-SECOND DATA**



# EXHIBIT 7

## REPORT & ORDER ALLOTMENT SITE

## IGNORING MINOR SHADOWING NEAR MADRAS - 30-SECOND DATA



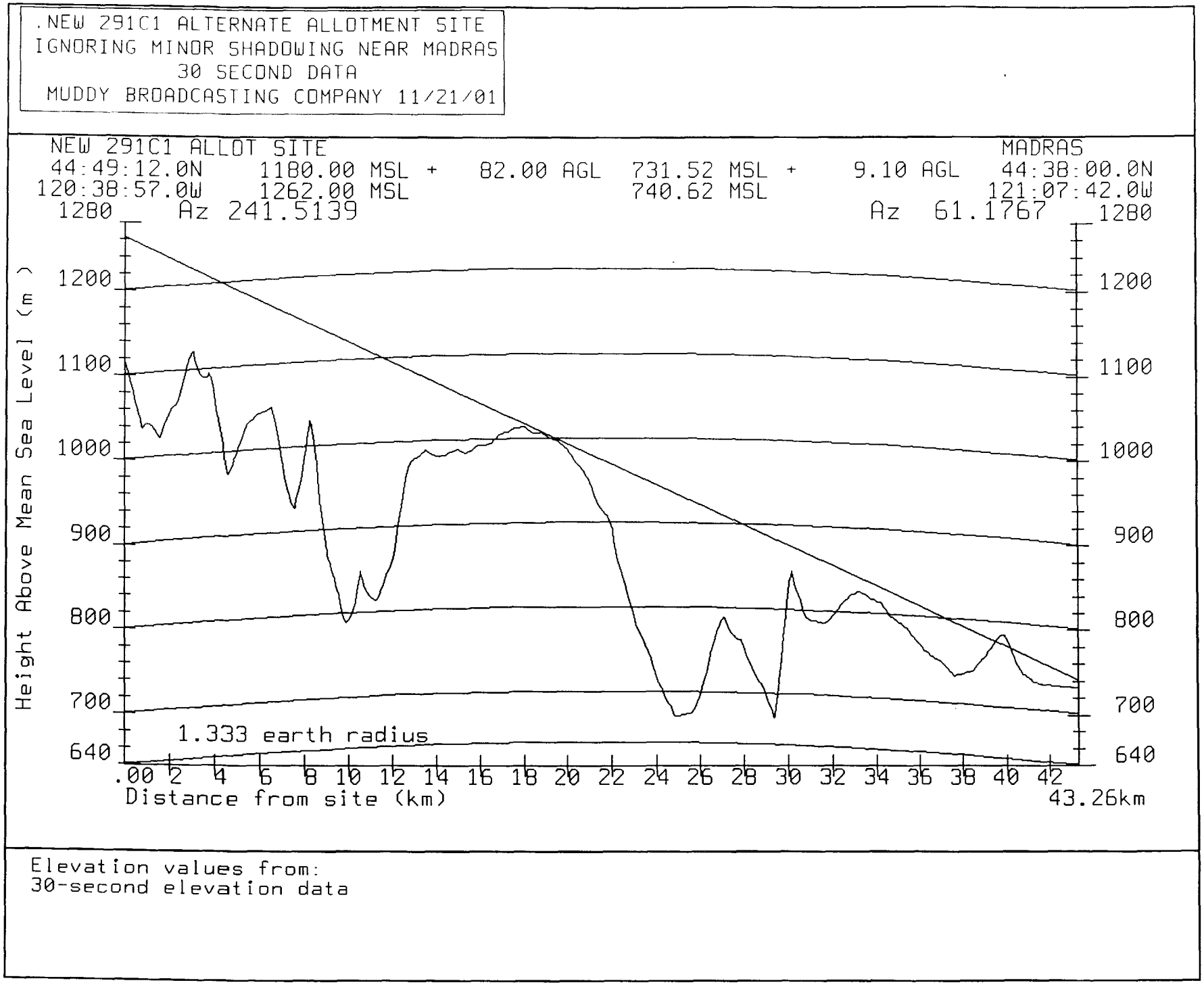



**EXHIBIT 8**

**NEW Ch291C1 ALTERNATE ALLOTMENT SITE**

**IGNORING MINOR SHADOWING NEAR MADRAS – 30-SECOND DATA**

# EXHIBIT 9
## TERRAIN PROFILE DATA SUMMARY

| | TERRAIN DATA | TWR HT REQ FOR FULL CLEARANCE | TWR HT REQ FOR CLEARANCE, IGNORING MINOR SHADOWING NEAR MADRAS |
|---|---|---|---|
| Report & Order Allotment site | 3 sec | 365m (1197ft) | 308m (1010ft) |
| Muddy Broadcasting Ch 291C1 new Alternate site | 3 sec | 329m (1079ft) | 128m (420ft) |
| Report & Order Allotment site | 30 sec | 240m (787ft) | 203m (666ft) |
| Muddy Broadcasting Ch 291C1 new Alternate site | 30 sec | 257m (843ft) | 82m (269ft) |

-terrain was examined at 0.1km intervals from the allotment sites
-standard FCC four-point average method was used for terrain heights
-endpoint was at the reference coordinates for Madras, using elevation as reported by the datum

**Report and Order Allotment site**: Channel: 251C1
Location: 44:50:02N; 120:45:55W
Ground level: 903m A.M.S.L.

**Muddy Broadcasting Company New Alternate Allotment Site:** Channel: 291C1
Location: 44:49:12N; 120:38:57W
Ground level: 1180m A.M.S.L.

***Conclusion: The Muddy Broadcasting Company Alternate Allotment Site is equal or superior to the Report and Order Allotment Site, which has already been deemed acceptable (regarding terrain blockage factors) by the Commission.***

# EXHIBIT 10
## SPACING STUDIES

**NEW 291C1 SITE FOR MADRAS ALLOTMENT -**
**BASED DIRECTLY ON FCC DATABASE OF 11/20/01**
*Showing full spacing to all other facilities*

Study for: Muddy Broadcasting Company
Search Channel:291 Class: C1 Latitude:444912 Longitude:1203857

| Station | Location | Ch | Cl | St | Brg | Dist | Req | Diff | OK/Short |
|---|---|---|---|---|---|---|---|---|---|
| KQAK | BEND | 289 | C1 | USE | 219.5 | 110.99 | 82. | 28.99 | OK |
| KQAK | BEND | 289 | C1 | LIC | 213.5 | 98.7 | 82. | 16.7 | OK |
| KQAK | BEND | 289 | C1 | CP | 213.5 | 98.7 | 82. | 16.7 | OK |
| KSTE-FM | VANCOUVER | 290 | C2 | CP | 296.2 | 182.38 | 158. | 24.38 | OK |
| KSTE-FM | VANCOUVER | 290 | C2 | USE | 297.7 | 184.76 | 158. | 26.76 | OK |
| KLOO-FM | CORVALLIS | 291 | C | LIC | 265.6 | 208.53 | 270. | -61.47 | Short[1] |
| KLOO-FM | CORVALLIS | 291 | C | LIC | 262.9 | 210.03 | 270. | -59.97 | Short[1] |
| MADRAS | MADRAS | 291 | C1 | ADD | 176.1 | 22.49 | 245. | -222.51 | Short[2] |
| CORVAL | CORVALLIS | 292 | C | VAC | 265.6 | 208.53 | 209. | -.47 | OK[3] |
| KLOO-FM | CORVALLIS | 292 | C | APP | 265.6 | 208.53 | 209. | -.47 | OK[3] |
| MADRAS | MADRAS | 293 | A | ADD | 231.9 | 51.28 | 75. | -23.72 | Short[4] |

[1]Channel 291C for KLOO-FM, Corvallis, OR, is moot. They are already on the air on channel 292C, as ordered by MM Docket 87-523. A 302-FM Application for Station License has been filed and is pending.

[2]This the original Ch 291C1 alternative site proposed by Muddy Broadcasting - now moot

[3]Fully spaced per §73.208(c)(8), "separations are to be rounded to the nearest kilometer."

[4]This is one of the alternative channels previously presented by Muddy Broadcasting - now moot

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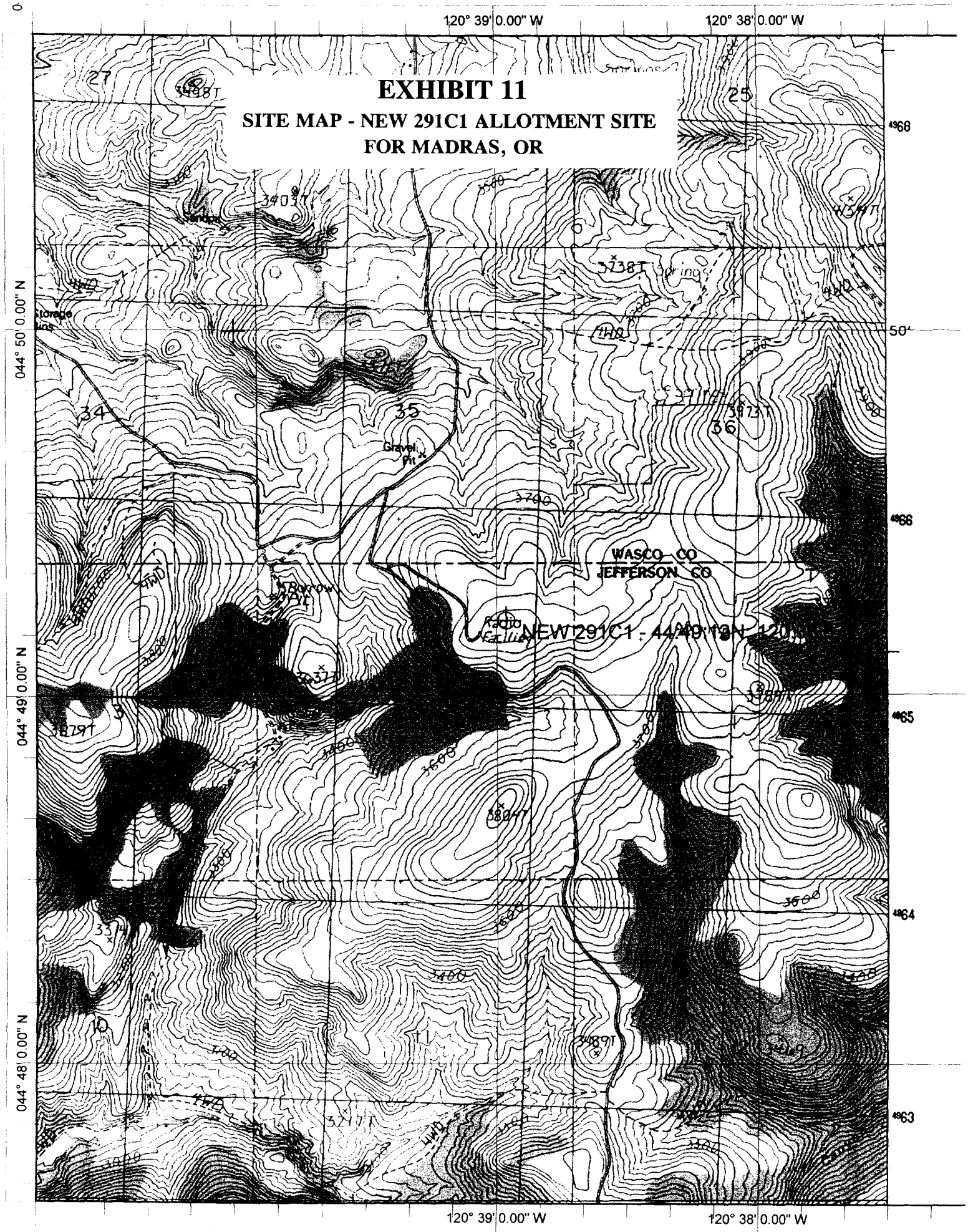
**NEW 291C1 SITE FOR MADRAS ALLOTMENT -**
**BASED DIRECTLY ON FCC DATABASE OF 06/01/01**
*Showing the lack of adequate spacing to KSTE-FM 290C1 on this date*

Study for: Muddy Broadcasting Company
Search Channel:291 Class: C1 Latitude:444912 Longitude:1203857

| Station | Location | Ch | Cl | St | Brg | Dist | Req | Diff | OK/Short |
|---|---|---|---|---|---|---|---|---|---|
| KQAK | BEND | 289 | C1 | USE | 219.5 | 110.99 | 82. | 28.99 | OK |
| KQAK | BEND | 289 | C1 | LIC | 213.5 | 98.7 | 82. | 16.7 | OK |
| KQAK | BEND | 289 | C1 | CP | 213.5 | 98.7 | 82. | 16.7 | OK |
| **KSTE-FM** | **VANCOUVER** | **290** | **C1** | **CP** | **296.** | **164.98** | **177.** | **-12.02** | **Short** |
| KSTE-FM | VANCOUVER | 290 | C2 | CP | 296.2 | 182.38 | 158. | 24.38 | OK |
| KSTE-FM | VANCOUVER | 290 | C2 | USE | 297.7 | 184.76 | 158. | 26.76 | OK |
| KLOO-FM | CORVALLIS | 291 | C | LIC | 265.6 | 208.53 | 270. | -61.47 | Short |
| MADRAS | MADRAS | 291 | C1 | ADD | 176.1 | 22.49 | 245. | -222.51 | Short |
| KBKS | TACOMA | 291 | C | LIC | 334.6 | 307.41 | 270. | 37.41 | OK |
| CORVAL | CORVALLIS | 292 | C | VAC | 265.6 | 208.53 | 209. | -.47 | Short |

# EXHIBIT 11

## SITE MAP - NEW 291C1 ALLOTMENT SITE FOR MADRAS, OR

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## CERTIFICATE OF SERVICE

I, Betty J. McArdle

hereby certify that copies of the foregoing "PETITION FOR RECONSIDERATION", MM Docket No. 00-87, were sent via First Class U.S. Mail, postage prepaid, on this 23rd day of November, 2001 to the following:

OFFICIAL SEAL
BETTY J. McARDLE
NOTARY PUBLIC-OREGON
COMMISSION NO. 323710
MY COMMISSION EXPIRES JUNE 7, 2003

Madras Broadcasting
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Washington, DC 20036

Combined Communications
Dominic Monihan, Esq.
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signed: Betty J. McArdle